IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

WP(C).No. 20848 of 2003(F)

PETITIONER:

M.V.BALAKRISHNAN, ASST. TEACHER,
DESAMITHRAM U.P.SCHOOL, CHEDICHERRY,
P.O.PERUVALATHUPARAMBA 670 593, KANNUR DISTRICT

BY ADV. SRI.M.VIJAYAKUMAR

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT, THIRUVANANTHAPURAM.

2. THE DEPUTY DIRECTOR OF EDUCATION, KANNUR

3. THE ASST. EDUCATIONAL OFFICER, IRIKKUR, KANNUR DISTRICT.

4. THE ACCOUNTANT GENERAL (A & E) KERALA, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER, SMT.SMITHA SUKUMARAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.NO.7748 OF 2003 IN WP(C) NO.20848 OF 2003

DISMISSED.

17.7.07. SD/-THOTTATHIL B.RADHAKRISHNAN, JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF ORDER NO.K.DIS.B/8755/85 DTD.25.2.86 ISSUED BY 3RD RESPONDENT.

EXT.P2: COPY OF COMMUNICATION OF 4TH RESPONDENT DATED 18.9.2000.

EXT.P3(A): COPY OF STATEMENT OF FIXATION OF PAY IN THE HIGHER SELECTION GRADE DATED 24.3.01.

EXT.P3(B): COPY OF STATEMENT OF FIXATION OF PAY IN THE REVISED SCALE IN G.O.(P)480/89 FIN.DTD. 1.11.89.

EXT.P3(C): COPY OF FIXATION OF PAY IN THE REVISED SCALE DATED 24.3.2001.

EXT.P3(D): COPY OF CHALAN RECEIPT.

EXT.P4: COPY OF REPLY BY 4TH RESPONDENT DATED 25.1.02.

EXT.P5: COPY OF CIRCULAR NO.24/96(89)/FIN. DTD.13-5-1996.

EXT.P6: COPY OF REPRESENTATION BEFORE 1ST REPSONDENT.

EXT.P7: COPY OF LR.NO.56492/P3/02 G.EDN. DATED 14.1.2003.

/TRUE COPY/

P.A. TO JUDGE

JP

THOTTATHIL B.RADHAKRISHNAN, J.

W.P(C).No.20848 OF 2003

Dated this the 17th day of July, 2007

JUDGMENT

The situation in which the petitioner has been placed is essentially one attributable to the department. I say so because after Exts.P3(a), P3(b) and P3(c) were issued, in the normal course of events, an Assistant Teacher in a U.P. school cannot be expected to be running out looking into the questions as to whether the benefits that he obtained in terms of those orders are well in terms of the K.E.R., K.S. & S.S.R, the relevant circulars, Government letters etc. As noticed in Ext.P5, when instances of wrong fixation arises, the department takes recourse to ruling 1 under Rule 30 in Part I K.S.R. Under such circumstances, options exercised on revision of pay can be altered only on the basis of valid re-option exercised by the employee concerned. All that has to be ensured is that re-option could satisfy the conditions prescribed in the Government orders permitting exercise of the same. In so far as the case of the petitioner is concerned, to continue to get the benefit of

Exts.P3(a), P3(b) and P3(c), all that is required is exercise of proper re-option, may be which shall stand deprived by efflux of time. Having regard to the very peculiar facts and circumstances of this case, it is appropriate that the petitioner is extended opportunity to exercise a valid re-option in accordance with Government orders.

In the result, this writ petition is disposed of directing that the petitioner will be permitted to exercise option/re-option as are necessary to ensure that the situation obtained by Exts.P3(a), P3(b) and P3(c) are not altered provided such option/re-option could give him such benefit and shall exercise such option/re-option within an outer limit of four months from now. If he does so, a final decision shall be taken on the basis of option/re-option within an outer limit of a further period of three months. All the other contentions are left open.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.